

INVENTOR: McBride et al
TITLE: MEDICAL TESTING INTERNET SERVER AND METHOD

attorney docket: CARDIOBEAT-2

Copies of claims 1, 10, 11, and 12 showing the changes made to the claims are attached.

REMARKS

Claims 1 through 15 are in the application as filed.

Claims 1-6, 8, 9 and 13-15 stand rejected under 35 U.S.C. 102(b) as being anticipated by the Brudny et al reference.

Claims 7 and 10-12 stand rejected under 35 U.S.C. 103(A) as obvious over the Brudny et al reference.

By this amendment, claims 1, 10, 11, and 12 have been amended to more clearly point out applicant's novel invention. No new matter has been added by these amendments and specific support for each added element is found in the specification as filed.

Claim 1 as amended recites, inter alia, "providing central serving apparatus coupled to the Internet, said central serving apparatus having access to medical test measurement software and computer program algorithms for processing medical test measurement data;

downloading medical test measurement software, via the Internet, to patient Internet apparatus, said medical test measurement software providing sensor placement information to a patient, said medical test software further providing diagnostic testing operation and operability of said sensors"

At the outset, it is pointed out that the entirety of the disclosure of Brudny et al is directed to a system in which rehabilitation is provided to one or more patients from a centralized location. In contrast, the present invention is not directed to a centralized rehabilitation system, but is directed to a method of providing medical testing. It is pointed out that the teachings of Brudny are absolutely silent on downloading test measurement software to patient Internet apparatus as called for in Claim 1. Brudny is also absolutely silent on the selection of computer program

att mcy docket: CARDIOBEAT-2

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algorithms for the processing of test measurement data as well as processing test measurement data to obtain test measurement information as called for in Claim 1. Still further, Brudny is absolutely silent on providing sensor placement information and diagnostic testing operation and operability of said sensors as called for in Claim 1.

In addition, Claim 1 further recites that medical test measurement information is uploaded to the central serving apparatus where an algorithm is selected to process the data to produce test information and that the test information is downloaded to predetermined user apparatus. In contrast, Brudny teaches processing physiological data at the patient station and uploading the test information to the supervisor's station. Selection of an algorithm and operation on the test data at the central server is not even suggested in Brudny.

Accordingly, claim 1 as amended is not shown, taught, or made obvious by the Brudny reference.

Claims 2, 3 and 4 all depend from Claim 1. For the same reason that claim 1 is not shown, taught, or made obvious by Brudny, Claims 2, 3, and 4 are not shown taught or made obvious by Brudny. In addition, Claim 4 recites the steps of receiving a request for test information and determining that the requester has authorization to obtain the information. At no point does Brudny show such steps or operation. The Examiner's reliance on FIG. 14 and col. 21, lines 42-45 does not support a rejection under 35 USC 102 since Brudny does not show the invention as claimed.

Accordingly claims 2, 3, and 4 are not anticipated by Brudny et al.

Claims 5 and 6 depend from Claim 1 through Claim 4. For the same reasons that Claims 1 and 4 are not anticipated by Brudny et al, claims 5 and 6 are not anticipated by Brodny et al.

INVENTOR: McBride et al

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TITLE: MEDICAL TESTING INTERNET SERVER AND METHOD

Although the Examiner has lumped the rejection of claims 8 and 13 together and points to col. 3, lines 64-66 as supporting the rejection, the cited passage merely states that "the present invention links a single healthcare professional to many patients, for example, via the Internet."

For the same reasons that claim 1 is not anticipated by Brudny et al, claims 8 and 13 are not anticipated by Brudny et al.

Claims 9 and 14 depend from claim 1. For the same reasons that claim 1 is not anticipated by Brudny et al, claims 9 and 14 are not anticipated by Brudny et al.

Claim 15 recites "providing said testing information as multimedia information displayable at said patient Internet apparatus". The Examiner points to Fig. 3 of Brudny as teaching providing test information as multimedia information at the patient Internet apparatus. However, Fig. 3 is merely a block diagram of a personal computer and does not indicate any specific functionality. Still further, there is no teaching in Brudny et al that the test information is provided as multimedia information. The closest Brudny et al comes to describing multimedia uses of the personal computer is at col. 10, lines 12-50. However, Brudny merely suggests uses of the multimedia components and does not suggest providing "testing information" as multimedia information displayable at the patient Internet apparatus. "Testing information" as set forth in Claim 1 comprises test measurement data processed in accordance with selected computer program algorithms.

Still further Claim 15, depends from claim 1. For the same reasons that Claim 1 is not anticipated by Brudny et al, claim 15 is likewise not anticipated by Brudny et al.

The Examiner has rejected claim 7 as obvious over Brudny et al. The Examiner has noted that Brudny does not teach determining whether the requester has authorization to obtain information. The Examiner takes official notice that "it is known in the art for a computer to

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TITLE: MEDICAL TESTING INTERNET SERVER AND METHOD

receive authorization from a requestor before releasing information" and takes the position that it would have been obvious to modify Brudny so that test information can be released only when authorization is made in order to keep information confidential. It is respectfully submitted that the Examiner is using hindsight to modify the reference to meet the method claimed. Brudny et al makes no suggestion that such an approach is contemplated. The Examiner has stated a generality that is not suggested within the four corners of the Brudny et al reference. The use of hindsight to modify references in order to meet the claimed invention is a prohibited test of patentability. Accordingly Claim 7 is not shown, taught or made obvious by Brudny et al.

In addition, Claim 7 depends from Claim 1. As explained above, Claim 1 is not shown, taught or made obvious by Brudny et al. Likewise claim 7 is not shown, taught or made obvious by Brudny et al.

The Examiner also notes that Brudny et al does not teach u-installing software after uploading test measurement data. Again, the Examiner takes official notice that it is well known in the art to un-install software programs.

Claims 10-12 have been amended to clarify that the automatic un-install software is automatically operable to un-install the test measurement software upon successful uploading of the test measurement data to the central serving apparatus. Since Brudny is silent on any type of un-install, it is respectfully submitted that the Brudny reference even as modified in accordance with the Examiner's suggestion does not anticipate the automatic un-install of test measurement software upon successful uploading.

Accordingly for this reason, Claims 10-12 are not shown, taught or made obvious by Brudny as modified as suggested by the Examiner.

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In addition, Claims 10-12 depend from Claim 1, and for the same reason that Claim 1 is not shown, taught or made obvious by Brudny et al.

Claims 16-19 have been added to more specifically claim other features of the invention. No new matter has been added. Support for these claims is found in the specification as filed. Each of the added claims depends from claim 1. For the same reasons that claim 1 is not shown, taught or made obvious by the Brudny et al reference, claims 16-19 are not shown, taught or made obvious.

The remaining references cited by the Examiner have been reviewed. None of the references taken singly or in combination with Brudny et al or each other shows, teaches or makes obvious the novel method of claim 1 or any of the dependent claims.

In view of the foregoing amendment and comments, it is believed that all the claims presently in the application are in condition for allowance. Reexamination and reconsideration are requested. It is further requested that the claims be allowed and that this application be passed to issue. An early notice of allowance would be appreciated.

Respectfully submitted,

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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CHANGES TO CLAIMS 1, 10, 11 AND 12

CLAIM 1. (AMENDED) A method of providing medical testing comprising:

providing central serving apparatus coupled to the Internet, said central serving apparatus having access to medical test measurement software and computer program algorithms for

processing medical test measurement data;

downloading medical test measurement software, via the Internet, to patient Internet apparatus, said medical test measurement software providing sensor placement information to a patient, said medical test software further providing diagnostic testing operation and operability of said sensors;

uploading medical test measurement data to said central server from remote locations via patient Internet apparatus via the Internet;

selecting a computer program algorithm at said central serving apparatus to process said medical test measurement data;

processing said medical test measurement data in accordance with said selected computer program algorithm to produce test information from said medical test measurement data; and

downloading said test information to predetermined user apparatus coupled to the Internet.

CLAIM 10. (AMENDED) A method in accordance with claim 8, comprising:

downloading automatic un-install software with said test measurement software, said automatic un-install software being automatically operable to un-install said test measurement software upon successful uploading of said test measurement data to said central serving apparatus.

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TITLE: MEDICAL TESTING INTERNET SERVER AND METHOD

CLAIM 11. (AMENDED) A method in accordance with claim 10, comprising:

automatically un-installing said test measurement software after unloading said test measurement

CLAIM 12. (AMENDED) A method in accordance with claim 8, comprising:

automatically un-installing said test measurement software after uploading said test measurement.